



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,940	12/29/2006	Barton John Kenyon	PTB-4398-207	8049

23117 7590 10/12/2010  
NIXON & VANDERHYE, PC  
901 NORTH GLEBE ROAD, 11TH FLOOR  
ARLINGTON, VA 22203

EXAMINER
----------

YOUNG, RACHEL T

ART UNIT	PAPER NUMBER
----------	--------------

3771

MAIL DATE	DELIVERY MODE
-----------	---------------

10/12/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



<b>Office Action Summary</b>	<b>Application No.</b> 10/533,940	<b>Applicant(s)</b> KENYON ET AL.	
	<b>Examiner</b> RACHEL T. YOUNG	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 3/26/10.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 132-196 is/are pending in the application.
- 4a) Of the above claim(s) 132-135 and 139-195 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 136-138 and 196 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/4/05, 12/1/09, 12/11/09, 3/26/10, 10/4/10</u> . | 6) <input type="checkbox"/> Other: _____  |



## **DETAILED ACTION**

### ***Preliminary Amendment***

1. This office action is responsive to the preliminary amendment filed on 3/26/10. As directed by the amendment: no claims have been amended, claims 1-131 have been canceled, and new claims 132-196 have been added. Thus, claims 132-196 are presently pending in the application.

### ***Election/Restrictions***

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 132-134, drawn to a CPAP, humidifier and a locking mechanism formed between a humidifier lid and humidifier base.

Group II, claims 135, 139, 161-164, 166-172, 178-185 and 195, drawn to a CPAP, humidifier and an air inlet with a sealable connection to an outlet of the CPAP.

Group III, claims 136-138 and 196, drawn to a humidifier with humidifier lid, water tub with water tub lid, and a pressurized sealing relationship between the humidifier lid and water tub lid.

Group IV, claims 140-160, drawn to a humidifier with a base and a water tube removably and sealably receivable in the base.

Group V, claim 165, drawn to a humidifier, water tank and filling height and metal portion.



Art Unit: 3771

Group VI, claims 173, drawn to a method of filling the tank.

Group VII, claims 174-177, drawn to a humidifier with an actuated drop in assembly.

Group VIII, claims 186-187, drawn to a humidifier with complimentary formations.

Group IX, claims 188-194, drawn to a humidifier with a humidifier lid, water container and a humidified gas outlet in the lid with a seal, and upon closure of the lid a seal is formed between the outlet and water container.

3. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

4.

Groups I-IX lack unity of invention because the groups do not share the same or corresponding technical feature.

Group I has a locking mechanism formed between a humidifier lid and humidifier base, which is its special technical feature. Group II has an air inlet with a sealable connection to an outlet of the CPAP, which is its special technical feature. Group III has a humidifier with humidifier lid, water tub with water tub lid, and a pressurized sealing relationship between the humidifier lid and water tub lid, which is its special technical feature. Group IV has a humidifier with a base and a water tube removably and sealably receivable in the base, which is its special technical feature. Group V has a humidifier, water tank and filling height and metal portion, which is its special technical feature. Group VI has a method of filling the tank, which is its special technical feature. Group VII has a humidifier with an actuated drop in assembly, which is its special technical feature. Group VII has a humidifier with complimentary formations, which is its special technical feature. Group IX has a humidifier with a humidifier lid, water container and a humidified gas outlet in the lid with a seal, and upon closure of the lid a



Art Unit: 3771

seal is formed between the outlet and water container, which is its special technical feature.

5. During a telephone conversation with attorney of record Paul Bowen on 10/6/10 a provisional election was made without traverse to prosecute the invention of Group III, claims 136-138 and 196. Affirmation of this election must be made by applicant in replying to this Office action. Claims 132-135 and 139-195 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 157 (page 12, para 83), 85 (page 13, para 88), 84 (Page 16, para 100), 200, (page 19, para 120), 201 (page 19, para 120) and 202 (page 19, para 120). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement



Art Unit: 3771

drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).



Art Unit: 3771

10. Claim 136 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (5,588,423) in view of Hewson et al. (6,435,180).

Regarding claim 136, Smith discloses a humidifier 1 with a water tub (16, 6, 7), a humidifier base 2 having a water tub receiving portion 12; and a humidifier lid 11 having an outlet 5 adapted to mate with an air delivery conduit (Col. 2, ll. 18-22); the humidifier lid is adapted to be in pressurized sealing relationship (Col. 2, ll. 11-13) with the water tub lid to allow a flow of air from the water tub to the air delivery conduit when the humidifier lid is in a closed position. Smith is silent regarding that the water tub has a lid. However, Hewson teaches a humidifier with a water container 66 in fig. 9 with lid 72 best seen in fig. 2 with ribs 78 creating vents to allow air flow through the lid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith's water tub to include a lid, as taught by Hewson, for the purpose of minimizing spills that occur if the humidifier is moved.

11. Claims 137-138 and 196 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith/Hewson, as applied to claim 136 above, further in view of Nooner (6,604,390).

Regarding claim 137, the modified Smith discloses a humidifier lid, but is silent regarding that the lid is hinged. However, in fig. 1 Nooner teaches a hinged lid (16, Col. 2, ll. 37-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Smith's humidifier lid with a hinged lid, as taught by Nooner, for the purpose of providing an attached lid that is easy to open and will not get lost.



Regarding claim 138, the modified Smith of claim 137 discloses that the lid is connected to the humidifier base by hinges (Fig. 1, Nooner).

Regarding claim 196, the modified Smith of claim 137 discloses that the humidifier lid can be pivotally rotated to an open position (Fig. 1, Nooner) to allow removal and/or insertion of the water tub from the water tub receiving portion of the humidifier base (Col. 3, ll. 20-30 Smith).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McGill et al. (6,615,444) and Murphy et al. (6,775,882) to vacuum cleaners with sealing and hinging lids connected to flow paths. Melville et al. (3,638,926) to a humidifier. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL T. YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-thurs 7 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RACHEL T YOUNG/  
Examiner, Art Unit 3771

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art  
Unit 3761